

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTINA DODGE,

Plaintiff,

v.

JO ANNE B. BARNHART,

Defendant.

No. C03-1758RSM

ORDER REVERSING DECISION
OF COMMISSIONER OF SOCIAL
SECURITY

This matter comes before the Court on the Report and Recommendation of the Honorable Monica J. Benton, United States Magistrate Judge, and plaintiff's objections thereto. Having reviewed the administrative record ("Tr.") and the remainder of the record, the Court finds as follows.

The Commissioner's decision must be affirmed if it is based on the proper legal standards and the findings are supported by substantial evidence in the record as a whole. *Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993); *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989). Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). *See also Magallanes v. Brown*, 881 F.2d 747, 750 (9th Cir. 1989). If the evidence can reasonably support either affirming or reversing the Commissioner's conclusion, the Court may not substitute its judgment for that of the Commissioner; in those circumstances,

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1 the Commissioner's conclusion must be upheld. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th
2 Cir. 2002); *Flaten v. Sec'y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995). The
3 reviewing court may not reweigh the evidence in the record, try issues *de novo*, or substitute its
4 judgment for that of the Commissioner. *Brown v. Apfel*, 192 F.3d 492, 496 (5th Cir. 1999).
5 However, if the benefits determination is based on legal error or is not supported by substantial
6 evidence in the record, the Court must set aside the Commissioner's denial of Social Security
7 insurance benefits. 42 U.S.C. § 405(g); *Martinez v. Heckler*, 807 F.2d 771, 772 (9th Cir. 1986).

8 The Court adopts Magistrate Judge Benton's summary of the facts and procedural
9 background, but declines to adopt her analysis and conclusions regarding the Administrative
10 Law Judge's ("ALJ") assessment of plaintiff's impairment of PSVT and its subsequent impact
11 on her residual functional capacity at step 4, evaluation of the medical evidence, and assessment
12 of plaintiff's credibility.

13 The record demonstrates that Plaintiff has been diagnosed with PSVT (paroxysmal
14 supraventricular tachycardia) causing her to suffer, for several years now, from episodes of heart
15 palpitations and chest pain caused by stress, strenuous activity, and leaning forward. At step 2
16 of the disability evaluation, the ALJ found that plaintiff had severe mental impairments as well
17 as the severe medical impairment of PSVT. Tr. 25. The ALJ also made the finding that
18 plaintiff's impairments "cause significantly vocationally relevant limitations". Plaintiff argues
19 that once the ALJ made these determinations, her subsequent failure in not including any
20 potential limitations from the PSVT in assessing plaintiff's residual functional capacity (RFC),
21 was per se legal error. Plaintiff is correct.

22 An impairment is deemed severe within the meaning of the Social Security Act's
23 regulations if it imposes significant restrictions in the ability to perform basic work related
24 functions. 20 C.F.R. 404.1521. Once the ALJ explicitly found that plaintiff suffered from a
25 severe impairment she then needed to consider any vocationally relevant limitations resulting
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1 from that impairment in the subsequent steps of the disability evaluation. In this case, those
2 limitations had to be considered specifically at step 4 when the ALJ assessed the plaintiff's
3 residual functional capacity. In assessing residual functional capacity, the ALJ must first assess
4 the nature and extent of claimant's physical, or exertional, limitations on a function by function
5 basis. 20 C.F.R. § 404.1545(b). This means that the ALJ must first address the claimant's
6 limitations and restrictions of physical strength in categories, sitting, standing, walking, lifting,
7 carrying, pushing and pulling, or other physical functions including postural functions such as
8 stooping, crouching or bending. Each function must be considered separately. Only after
9 making these assessments can the individual's RFC be expressed in terms of the proper
10 exertional level of work that a claimant may be able to perform, i.e., sedentary, light, medium,
11 heavy, and very heavy. SSR 96-8p, No. 4.

12 In this case, the ALJ failed to make any findings addressing what exertional limitations
13 plaintiff's PSVT would impose after specifically finding that it was a severe impairment. As
14 plaintiff argues in her Objections to the Magistrate Judge's Report and Recommendation, if the
15 ALJ believed that plaintiff was not credible about the PSVT, or if the ALJ believed that the
16 PSVT caused no significant vocational limitations, then the ALJ needed to state these findings in
17 her decision and explain her rationale for finding this impairment not "severe" within the
18 meaning of the Act. This she failed to do. Instead, by making the specific finding that plaintiff
19 suffered from "severe" impairments, then those impairments *must* be considered by the ALJ at
20 all subsequent steps. Given this error of law, the ALJ's assessment of plaintiff's RFC is flawed
21 and the subsequent steps in the disability evaluation process must be reconsidered.

22 If the Court determines that the ALJ erred, it has discretion to remand for further
23 proceedings or to award benefits. See *Marcia v. Sullivan*, 900 F. 2nd 172, 176 (9th Cir. 1990).
24 The Court may direct an award of benefits where "the record has been fully developed and
25 further administrative proceedings would serve no useful purpose." *McCartey v. Massanari*,
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1 2298 F.3d 1072, 1076 (9th Cir. 2002). The Court may credit the evidence before it as true and
2 remand for an award of benefits when:

3 (1) the ALJ has failed to provide legally sufficient reasons for rejecting the
4 claimant's evidence; (2) there are no outstanding issues that must be resolved
5 before a determination of disability can be made; and (3) it is clear from the
6 record that the ALJ would be required to find the claimant disabled if she
7 considered the claimant's evidence.

8 *Id.* At 1076-77.

9 Here, plaintiff argues that the ALJ committed other errors in reaching her decision. The
10 Magistrate Judge acknowledges that other errors were committed but finds them "harmless" in
11 view of the entire record. However, it is clear that the subsequent steps of the disability
12 evaluation must be reassessed given the Court's previous finding regarding the flawed RFC.
13 That re-evaluation could easily lead to changes in any subsequent step and, ultimately, the ALJ's
14 final decision. In other words, there are outstanding issues that must be resolved and it is not
15 clear from this record that the ALJ would necessarily be required to find that claimant is
16 disabled. Remand for additional administrative proceedings is the appropriate remedy.

17 On remand, the plaintiff is free to make all appropriate arguments regarding her claim of
18 disability and the ALJ is directed to reconsider and properly evaluate the medical evidence,
19 complete a proper PRTF assessment, and reassess plaintiff's credibility and provide specific
20 reasons, if plaintiff's testimony is to be rejected.

21 For all of the foregoing reasons the decision of the Commissioner of the Social Security
22 Administration is REVERSED and remanded for additional administrative proceedings.

23 DATED this 13th day of September, 2006.

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25 RICARDO S. MARTINEZ
26 UNITED STATES DISTRICT JUDGE